day traffic conditions would seem to demand that such a duty be created even in the absence of a technical trespass; and might well be imposed by the court, even in the absence of a statute.

TORTS—LIABILITY OF WIFE FOR DEATH CAUSED BY HER AUTOMOBILE DRIVEN BY HUSBAND.—This was an action against the defendant and her husband for the death of the plaintiff's intestate caused by the negligent operation of the defendant's automobile by her husband while engaged in his own pursuits. She had purchased this automobile in her own name for the use and pleasure of herself and the members of her family. *Held,* that the plaintiff should not recover. *Smith v. Weaver* (1919, Ind. App.) 124 N. E. 503.

There seems to be a square conflict of authority upon the problem involved in the principal case. Some courts hold that mere ownership of an automobile does not render a father liable for injuries to another due to the negligent operation of that vehicle by a minor son in furtherance of the son's own pleasure or business. *Hays v. Hogan* (1917) 273 Mo. 1, 200 S. W. 286; *Lemke v. Ady* (1916, Iowa) 159 N. W. 1011; see (1917) 26 YALE LAW JOURNAL, 327. Or that a husband is not liable for injuries caused by his wife's negligent operation of his automobile while engaged in her own pursuits. *Mast v. Hirsh* (1918) 199 Mo. App. 1, 202 S. W. 275; *Lewis v. Steele* (1916) 52 Mont. 300, 157 Pac. 575; *Reynolds v. Buck* (1905) 127 Iowa, 601, 103 N. W. 946. The increasing weight of authority seems to be that when a motor car is maintained by the *pater familias* for the general use and convenience of his family, he is liable for the negligence of a member of the family having general authority to drive it, while the car is being used as a family car. *Smith v. Jordan* (1912) 211 Mass. 269, 97 N. E. 761; *McNeal v. McKain* (1912) 33 Okla. 449, 126 Pac. 742. Some courts deny that in this class of cases there exists any relationship of master and servant. *Hays v. Hogan, supra;* see (1917) 27 YALE LAW JOURNAL, 621. While other courts, where the car is maintained solely or partly for the use and pleasure of the family, regard the member of the family while operating the car for his own use and pleasure, as the servant of the owner. See (1915) 24 YALE LAW JOURNAL, 347. Where there are several members of the owner's family riding in the automobile at the time of the accident, the courts have found no difficulty in holding the owner liable, on the ground that the car is being used for the purpose for which it was provided. *McNeal v. McKain, supra; cf. Bourne v. Whitman* (1911) 209 Mass. 155, 95 N. E. 404. The doctrine of the principal case seems to put a premium on the owner's failure to employ and provide a competent chauffeur to drive his family. See *Birch v. Abercrombie* (1913) 74 Wash. 486, 496, 133 Pac. 1020, 1024.

TRUSTS—TRUSTEE AND EXECUTOR—TAXATION.—The defendants were appointed "executors of and trustees under" the will of Flagler, which directed the payment of debts and legacies and created a trust of the residue. In 1913 the defendants qualified as executors in Florida—the domicile of the testator; thereafter they paid all debts and legacies, and from time to time transferred the property, which consisted of corporate stock and bank deposits, to their domicile in New York, charging the same on their books to themselves as trustees. The State of Florida assessed the property for 1916 taxes at the domicile of the decedent, against the defendants as "trustees." Suit to collect the tax was dismissed, despite the State's contention that "trustees" was mere *descriptio personae* and that the defendants as "executors" were liable for the taxes. *Held,* that such dismissal was proper, because the property had passed by operation of law to the defendants as trustees. *State v. Beardsley* (1919, Fla.) 82 So. 794.

Intangible personal property in the hands of an executor or administrator is taxable at the domicile of the decedent or at the place where administration was granted. *Commonwealth v. Williams* (1904) 102 Va. 778, 47 S. E. 867; *Cornwall v. Todd* (1871) 38 Conn. 443. But such property held by a trustee is taxable at the latter's domicile. *Guthrie v. Pittsburgh, C. & St. L. Ry.* (1893) 158 Pa. 433, 27 Atl. 1052; *Walla Walla v. Moore* (1897) 16 Wash. 339, 47 Pac. 753. Allowing the State's contention that the word "trustee" was merely descriptive and synonymous with "executor," it became important to find at what point of time the property really vested in the trustee as such. Many cases have held that where bonds are required, a surety on an executor's bond is not released until a trustee's bond has been given. *White v. Ditson* (1885) 140 Mass. 351, 4 N. E. 606. In many jurisdictions an accounting plus an order of distribution by the Probate Court is necessary to authorize an executor to hold the devised property as trustee. *Re Estate of Higgins* (1895) 15 Mont. 474, 39 Pac. 506; *Roach's Estate* (1907) 50 Ore. 179, 92 Pac. 118. So where an executor has authority conferred by the will to sell land, a contract to sell could not be avoided unless the executor had been authorized by the court to hold as trustee. *Jones v. Broadbent* (1912) 21 Ida. 555, 123 Pac. 476. The preceding cases turn partly on statutes. But independently of statute, the reasoning has been that where the duties of the executor are to continue as executor in the remainder of the estate, there must have been some distinct act of appropriation to give rise to the trust. So an executor will be liable as executor for an investment which, although proper as a trust, is not clearly marked as such. *Miller v. Congdon* (1859, Mass.) 14 Gray, 114; *Sheffield v. Parker* (1893) 158 Mass. 330, 33 N. E. 501; see *Alston v. Munford* (1814, C. C. D. Va.) 1 Brock. 266, 1 Fed. Cas. No. 267. An executor will no longer be held liable as executor where he has transferred property to his co-executor as trustee under the will. *Anderson v. Earle* (1877) 9 S. C. 460. The transfer was held a distinct act of appropriation. While an accounting is the best evidence of such an appropriation, still there must have been an actual separation of the funds to the trust use. *In re McDowell et al.* (1916, Surr. Ct.) 97 Misc. 306, 163 N. Y. Supp. 164; *cf. Story's Adm'r v. Hall* (1912) 86 Vt. 31, 83 Atl. 653. On the other hand, where all duties as executor have been completed and the time for a final accounting has long since passed, it has been held that the executor became by operation of law liable as trustee to the *cestui que trust* named in the will. *Wooden v. Kerr* (1892) 91 Mich. 188, 51 N. W. 937. And the executor has been held in such a case to be no longer liable as executor. *State v. Cheston and Carey* (1879) 51 Md. 352. And after the duties as executor are completed, though there has been no final accounting, and though there has been no formal transfer of the funds by the executor to himself as trustee, the income will be held payable to the *cestui que trust*. *Fenton v. Hall* (1908) 235 Ill. 552, 85 N. E. 936. In such a case, only conduct as trustee gives rise to the trust and entitles the trustee to sue as such on notes due. *Goodsell v. McElroy Bros. Co.* (1912) 86 Conn. 402, 85 Atl. 509. Therefore, it seems that so long as executorial duties are to continue, there must be some unequivocal appropriation to the trust before an executor may hold as trustee. But as soon as such duties are completed, if it is not a prerequisite that a trustee's bond be given or an order of court secured the property may be said to be held by the executor as trustee by operation of law.

WILLS—IMPLIED REVOCATION BY CONVEYANCE.—The testatrix made a devise of her homestead to the defendant, then later conveyed the same to him by deed. The deed was invalid because of lack of the husband's signature. The husband prayed that the devise be decreed revoked. *Held,* that the decree be not issued,